

MATTER OF SUM
In Deportation Proceedings
A-4713047

Decided by Board May 22, 1970

Respondent's conviction under section 11720 of the California Health and Safety Code for unlawful use of proscribed narcotic drugs may not be equated with a conviction for unlawful possession of such narcotic drugs so as to bring him within the "illicit possession" provisions of sections 212(a)(23) and 241(a)(11) of the Immigration and Nationality Act (*Varga v. Rosenberg*, 237 F. Supp. 282 (S.D. Calif., 1964), followed). [*Matter of H—U—*, 7 I. & N. Dec. 533, and *Matter of Fong*, 10 I. & N. Dec. 616, overruled.]

CHARGES:

Order: Act of 1952—Section 241(a)(1) [8 U.S.C. 1251(a)(1)]—Excludable at time of entry—immigrant, no visa (section 212(a)(20) of Act).

Lodged: Act of 1952—Section 241(a)(1) [8 U.S.C. 1251(a)(1)]—Excludable at time of entry—immigrant, no visa section 13(a), Act of May 26, 1924).

ON BEHALF OF RESPONDENT:
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ON BEHALF OF SERVICE:
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(Brief filed)

The special inquiry officer certified his order denying respondent's application under section 249 of the Act. The application will be granted.

The question is whether the Board should continue to follow its precedents holding that a conviction for unlawful use of proscribed drugs makes an alien deportable as one who has been convicted for unlawful possession of such drugs. We shall overrule the precedents.

The facts have been fully stated by the special inquiry officer. He found the respondent deportable on the lodged charge. Respondent applied to the special inquiry officer, under section 249 of the Act, for the administrative creation of a record of lawful admission for permanent residence. One condition of eligibility is